

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4651 of 1983

with

SPECIAL CIVIL APPLICATION No 2446 of 1984

and

SPECIAL CIVIL APPLICATION No 5234 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNION CARBIDE INDIA LTD.

Versus

SHRI FARASURAM C.PATEL

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Appearance:

1. Special Civil Applications No. 4651/83 and 2446/84  
MR VB PATEL Sr. Adv. with Assisting Counsel MR SD PATEL  
for Petitioner  
None present for Respondents
2. Special Civil Application No 5234 of 1984  
None present for Petitioner  
MR VB PATEL Sr. Adv. with Assisting Counsel MR SD PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/10/97

C.A.V. JUDGEMENT

1. These three special civil applications have arisen out of the award of the Industrial dispute raised by Shri Farsuram C. Patel, an employee of Union Carbide India Ltd..

2. The special civil application No.4651/83 has been filed by the Union Carbide India Ltd. (hereinafter referred to as 'the Company') against the award Part-A of the Labour Court at Ahmedabad in Reference (LCA) No.468/77 under which a preliminary issue that the respondent-employee Shri Patel is a workman has been decided. In this special civil application, this Court has passed the order of admission of this special civil application but the proceedings of the Labour Court were not stayed. The Labour Court ultimately passed the final award i.e. Award Part-B on 7th February, 1984. The reference was allowed and the Company was directed to pay an amount of backwages to the respondent employee during the intervening period i.e. from the date of discharge to the date of award, minus the amount that he has earned by way of gainful employment by getting some intermittent service upto December, 1979. Both the Company and the employee have challenged this award by filing two separate special civil applications i.e. the special civil applications No.2664/84 and 5234/84.

3. In special civil application No.2446/84, this Court has passed the order on 27th July, 1984 which reads as under:

Ad-interim relief staying the operation of Award Part II on the condition that the petitioner shall deposit Rs.1,00,000/- within two weeks from today in this Court and pay Rs.10,000/- within two weeks to the respondent as an adhoc payment in respect of which appropriate directions will be given while disposing of the petition. The Registrar shall invest the aforesaid amount of Rs.1,00,000/- in any one of the Nationalised Banks in the fixed deposit for 61 months so as to earn as far as possible 12% interest thereon and instruct the Bank in which the fixed deposit account is opened to credit the said interest in the account of the respondent which will be opened either in the same branch or any other branch as may be intimated by him.

It is not in dispute between the parties that Rs.1,00,000/- has been deposited by the Company in pursuance of the aforesaid order of this Court out of which Rs.40,000/- has been paid to the employee Shri F.C. Patel and balance amount is lying deposit in this Court.

4. The counsel for the Company raised manifold contentions challenging the legality, validity and propriety of both Award Part-I and Part-II. Lastly, he submitted that the Company has no objection in case Rs.1,00,000/- is retained by the employee in full and final settlement of the dispute.

5. I have given direction to both the parties to file statement of claim. However, the counsel for the employee is not present but the counsel for the Company has submitted a statement wherefrom I find that Rs.1,16,712/- was stated to be payable to the employee out of which Rs.21,000/- has been deducted that is the amount which the employee has earned during the period of discharge. Out of this amount of Rs.95,712/-, the Company has further deducted Rs.10,000/- as adhoc payment paid to the employee in pursuance of the order of this Court dated 27th July, 1984.

6. The case of the Company before the Labour Court was that the employee is not a workman. He was appointed as a Sales Representative. It has further been contended that the employee has been discharged from services of the Company as it has loss the confidence in him. Though he was a Sales Representative of the Company, but he was recommending the products of other companies to the consumers. The Labour Court has not accepted the case of the Company of loss of confidence in the employee. However, the Labour Court has not ordered for the reinstatement of the employee. This course has not been followed as the Company's counsel had strongly contended that even if the discharge order is found to be illegal and improper, the employee should not be reinstated on his original post as the Company has loss the confidence in him. The Labour Court has accepted this contention of the counsel for the Company and it has further accepted that the Company has loss the confidence in the employee and as such he should not be directed to be reinstated. In lieu of reinstatement, the Company should be directed to pay retrenchment compensation over and above some compensation in lieu of reinstatement equivalent to the amount of retrenchment compensation. Accordingly the order has been made for payment of backwages and retrenchment compensation in lieu of reinstatement.

7. I have gone through the award of the Labour Court and I am satisfied that the Company may not be able to prove the loss of confidence in the employee but still there is material on record to show that it has reasonably believed that the employee was doing the activity of recommending the products of other companies to the consumers. Looking to the status of employee as well as the work of the Company which he was entrusted, if there is slightest doubt in the mind of the Company that he is recommending the products of other companies, I am of the opinion that in such matters the said person should not be ordered to be reinstated. Full faith and confidence in between the employer and the employee of the category to which Shri Patel belong is utmost essential and important and in such cases where the Labour Court has declined to grant the reinstatement to the employee, it cannot be said that it has acted arbitrarily or the award is perverse. However, in view of the Company's offer that the employee may retain Rs.1,00,000/- as ex-gratia, I do not consider it appropriate to go on all the contentions raised by the counsel for the Company. But it is made clear that that this judgment may not be taken to be a judgment of confirmation of the award of the Labour Court on the question of respondent-employee, a Sales Representative, to be a workman. This course is still open for reconsideration of the Labour Court if in future any occasion arises in other case.

8. In the result, the special civil applications No.4651/83 and 5234/84 are dismissed. Rule discharged. So far as the special civil application No.2446/84 is concerned, this special civil application stands disposed of in the terms that Rs.1,00,000/- which has been deposited by the petitioner before this Court together with accrued interest thereon shall be the final amount payable to the workman-employee towards his claim of reinstatement as well as retrenchment compensation. The registry is directed to pay the balance amount of Rs.1,00,000/- together with interest accrued thereon to the employee-respondent after getting it withdrawn from the bank forthwith. These special civil applications and rule therein stand disposed of in the aforesaid terms with no order as to costs.

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